IN THE

Supreme Court of the United States

OCTOBER TERM 1976

Case No. 76-131

CLIFFORD J. HYNNING AND CAROL H. SMITH,
Petitioners,

v.

GLADYS L. BAKER, ET AL.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

FRANK E. BROWN, JR.
BARHAM, RADIGAN, SUITERS & BROWN
2009 North Fourteenth Street
Arlington, Virginia 22216

and

CLIFFORD J. HYNNING
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone 232-0775

Attorneys for Petitioners

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

TABLE OF CONTENTS

TABLE OF CONSTITUTIONAL PROVISIONS, STATUTES, CASES, TREATISES AND OTHER MATERIALS

IN THE

Supreme Court of the United States

OCTOBER TERM 1976

Case No. 76-131

CLIFFORD J. HYNNING AND CAROL H. SMITH,
Petitioners,

v.

GLADYS L. BAKER, ET AL.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

Petitioners, Clifford J. Hynning (hereinafter called the debtor) and Carol H. Smith (hereinafter called the joint tenant), pray that a writ of certiorari issue to the Supreme Court for the State of Virginia.

OPINIONS BELOW

The Commissioner in Chancery issued a typewritten report dated December 17, 1974, excerpted in the Appendix (at page 1a); the trial court's informal letter judgment is dated April 29, 1975 (Appendix 4a); and the memorandum judgment of the Supreme Court of Virginia is dated April 30, 1976 (at 6a).

JURISDICTION

This petition was filed in typewritten form within 90 days of the final judgment of the Supreme Court of Virginia, together with a motion to substitute the printed petition for certiorari as soon as available. The date of the judgment of the Supreme Court of Virginia is April 30, 1976. The court's jurisdiction is invoked under 28 USC 1257(3).

QUESTIONS PRESENTED

In an action by judgment creditors to compel the sale of real estate held by the debtor in joint tenancy with another, petitioners consider the following issues are presented:

Is a debtor's constitutional right against the deprivation of property without due process of law violated by a trial court's findings of fraud wholly on a presumption based on allegations contained in a brief filed by judgment creditor ("badges of fraud") without any rational relationship to or tangible support by evidence in the record?

Are the constitutional rights of a joint tenant, who acquired her joint interest on the basis of fair and adequate consideration, violated by a trial court's presumption of fraud without a scintilla of evidence or finding of fact connecting the joint tenant with any intent or knowledge of fraud?

Is the Supreme Court of Virginia (and, consequently, the trial court) bound by its own regulation of the rules of practice relating to verification in pleadings (here answers to interrogatories)?

If the courts of Virginia are so bound by their own promulgated rules of practice, was petitioners' constitutional right to a fair trial denied by the trial court's

disregard of the specific provisions of the rules of court on lack of verification and the courts' consequent disregard of the answer to interrogatories by counsel, unverified, except as "admissions against interest"?

CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED

The 14th Amendment to the Constitution of the United States, which reads, in part, as follows: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Virginia Code, § 55-80, which reads, in part, as follows: "*Void fraudulent acts; bona fide purchasers not affected.* Every gift, conveyance, assignment or transfer of, or charge upon, any estate, real or personal given with intent to delay, hinder or defraud creditors, purchasers or other persons of or from what they are or may be lawfully entitled to shall, as to such creditors, persons or other persons, their representatives or assigns, be void. This section shall not affect the title of a purchaser for valuable consideration, unless it appears that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void such title of such grantor."

Virginia. Rules of the Supreme Court of Virginia. "Rule 1:10. *Verification.* If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed."

STATEMENT OF THE CASE

This case comes to the Supreme Court on a *per curiam* affirmance by the Virginia Supreme Court of the judgment of the Circuit Court of Arlington County, which adopted and confirmed a commissioner's report setting aside a conveyance creating a joint tenancy as fraudulent.

The action was in the nature of a creditor's bill to have certain real estate owned by Defendants sold to satisfy judgment recovered against the debtor alone. Aside from testimony regarding dollar claims of creditors, the only evidence before the lower court and the commissioner were the interrogatory answers, the documents produced by Hynning and the land records of Arlington County.

On September 9, 1971, Hynning, widower and not remarried, conveyed certain real estate situate in Arlington County to himself and his daughter, Smith, as joint tenants with common-law right of survivorship. The consideration for the creation of the joint tenancy was the sum of approximately $42,000 flowing from Smith to Hynning in the form of forgiveness of a promissory note in the amount of $22,000 from Hynning to his late wife, which had been bequeathed to Smith, and the transfer of the proceeds of insurance policies on the late wife received on behalf of Smith. Hynning answered the interrogatories through counsel, stating in detail the above consideration.* The promissory note in the amount of $22,000 had been set forth in the probate records of

* The answer to interrogatories was as follows: "4. Under the Last Will and Testament of Martha H. Hynning, the deceased wife of Defendant, probated in Arlington County, Virginia, Carol H. Smith (nee Hynning) was bequested a promissory note in the face amount of $22,000 (secured by a deed of trust on 3700 N. Military Road, Arlington, Virginia). Mrs. Smith was also the beneficiary of insurance policies aggregating $22,000. Thus, $42,000 was the pecuniary consideration for the conveyance of 17 September 1971, in addition to other considerations."

Arlington County at the time of probate of the estate of the late Martha H. Hynning (Will Book 53 at p. 243 and Fiduciary Settlement Book 0-3 at p. 384). The proceeds of the insurance policies on the late Martha H. Hynning were evidenced by bank deposit tickets dated June 21, July 13 and 14, 1965, submitted in response to a *Subpoena Duces Tecum*. In response to interrogatories on net worth, the debtor stated that his net worth had ranged from approximately $699,000 as of March 23, 1970, to $439,000 as of June 7, 1972. These answers to interrogatories were filed on June 10, 1974. The commissioner found that, at this time, there were only $8,000 of judgments outstanding in addition to deeds of trust.

On September 10, 1974, a counsel for a creditor objected to the answers to the interrogatories as not having been filed under oath, notwithstanding Rule 1:10 of the Virginia Supreme Court rules, which provide that technical objections to verification are waived unless made within seven days of the filing of the pleading. Under this rule, these objections should have been made by June 18, 1974. The objection was made on September 10, almost three months after the deadline of the Virginia rules.

When it became apparent that counsel for the creditors would rely wholly on the above without presenting evidence of their own, counsel for petitioners requested a full evidentiary hearing on the allegations of alleged fraud and requested proof thereof by the creditors. This was ignored by the commissioner, who on December 17, 1974, filed his report (1a), holding that the 1971 conveyance was void as a fraudulent conveyance in violation of § 55-80 1950 Code of Virginia, as amended. Exceptions were filed to this report which were confirmed by the trial court on April 29, 1975 in a brief informal letter memorandum (4a) the trial court ordered a sale of the property, suspended by bond. The Supreme Court of Virginia affirmed in a *per curiam* order (6a).

REASONS FOR GRANTING THE WRIT

The informal, highly casual and tersely uninformative manner in which the part-time commissioner in chancery (1a), the circuit judge (4a), and the Supreme Court of Virginia (6a) made their successive rulings in this case make it somewhat awkward to set forth the findings of fact and the conclusions of law. The part-time commissioner in chancery apparently did not choose to have time to set forth in his own words the findings of fact or conclusions of law, and incorporated by reference an entire letter filed with him by counsel for one of the creditors (2a). The circuit judge affirmed the commissioner's report as supported by "the totality of the evidence," excepting, apparently, the issue on the alleged lack of consideration for the creation of the joint tenancy (2a). What remains of "the totality" is far from clear.

The Supreme Court of Virginia was equally unilluminating in its judgment, stating it was "of the opinion that there is no reversible error in the decree appealed from, thus rejects said opinion, and refuse said appeal . . ." (6a).

1. **The constitutional rights of a debtor were violated by the courts below in finding fraud solely on a presumption derived from written arguments ("badges of fraud") of counsel for a creditor and without any base in the record and without any finding of knowledge or intent of fraud, and thereby deprived the debtor and the joint tenant of property without due process of law in violation of the 14th Amendment to the Constitution of the United States.**

For want of anything in writing by the court system of Virginia, setting forth either the findings of fact or the conclusions of law, petitioners have perforce gone to the letter of counsel for one of the creditors to find the facts and the law of this case. This is where the damning phrase, "badges of fraud" comes from (2a). True, the commissioner had said "nearly all of the badges of fraud are present in this case" (2a). If the evidence was so overwhelming, one would expect the commissioner to be able to document or specify what "badges of fraud" were present in this case. The part-time commissioner refrained, scrupulously, from doing so. His opinion, as well as the opinion of the Circuit Court, is bereft of any illumination on what "badges of fraud", either the commissioner or the circuit judge were writing about as reasons for their decisions. The letter of the creditor's counsel listed six badges of fraud, as does the editorial comment of the Virginia Digest, from which presumably the creditor's counsel took his enumeration.

The first "badge of fraud" cited by the crditor's counsel is the relationship of Hynning and Smith, in that Smith is the married daughter of Hynning. Is that evidence of fraud? Neither the commissioner nor the circut court said so.

Grantor's insolvency is cited by the creditor's counsel as the second "badge of fraud", but the creditor's counsel in the same breath conceded there was no evidence of insolvency. Is "no evidence of insolvency" evidence of fraud? Again, neither the commissioner nor the circuit court said so.

The third "badge of fraud" cited by creditor's counsel, is the pursuit of grantor by his creditors. When does debt become tantamount to fraud? Again, neither the commissioner nor the circuit court said so, and this Court has held specifically to the contrary in *Manley* v. *Georgia*, 279 US 1 (1929) in voiding a Georgia statute making proof of insolvency *prima facie* evidence of fraud on the part of bank directors.

> "Mere legislative fiat may not take the place of fact in the determination of issues involving life, lib-

> erty, or property . . . Inference of crime and guilt may not reasonably be drawn from mere inability to pay demand deposits and other debts as they mature . . . The connection between the fact proved and that presumed is not sufficient" (at pp. 6-7).

The fourth "badge of fraud" cited by the creditor's counsel is lack of consideration. Although the promissory note, the deed of trust and the proceeds of insurance policies had been spread contemporaneously on the probate and inheritance tax records of Arlington County, Virginia, the creditor's counsel contended they had not been shown. The circuit judge was sufficiently uncomfortable over the public record of the note and the insurance policies that he noted consideration was "only one of the badges of fraud" and chose to rely instead on the "totality of the evidence," without submitting a single specification of any kind. If the circuit court did not find lack of consideration, what remains as evidence of fraud under this enumeration? That cover-up phrase, "the totality of the evidence" answers nothing on this record.

Item five in the list of "badges of fraud" cited by the creditor's counsel is that Hynning has continued to live in his house. Is living in a house by one of the joint tenants evidence of fraud? Neither the commissioner nor the circuit court said so.

The sixth "badge of fraud" cited by the creditor's counsel is fraudulent incurrence of indebtedness after the conveyance, but the creditor's counsel, for once, conceded that no evidence had been presented on this point.

What this comes down to is that certain creditors have not been paid and they are shouting fraud. But they produced no evidence of fraud. Fraud had been charged in the creditor's pleading solely in terms of "lack of consideration" to be refuted by the evidence of record, *op. cit.*, pp. 4-5, and presumed by the commissioner who ordered the conveyance set aside on ground of fraud. The

circuit judge abandoned the only specific ground cited, namely, lack of consideration, and upheld, in a puzzling *non sequitor*, the order setting aside the conveyance on ground of fraud "on the totality of the evidence." To deprive petitioners of their property under these circumstances is indeed a travesty of justice in violation of their constitutional rights to due process.

This Court has on several occasions invalidated state statutes for presumptions involving fraud where the presumption did not disclose any connection between the facts proven and the facts presumed. Thus, in *Bailey* v. *Alabama*, 219 US 219 (1911) at p. 233, a statute which treated a breach of contract of labor as *prima facie* evidence of intent to defraud an employer of money paid by him in advance, was found by this Court to be constitutionally vulnerable. The trial court had disregarded evidence rationally bearing upon fraud—as here was the evidence of consideration—and decided upon evidence pertaining to an unrelated breach of contract—the failure to pay a debt, as here—with the consequence that an adequate hearing on the fraud charge had not been afforded. That is precisely this case except that the presumptions here were made by the judge through judge-made law rather than legislative action. As this Court then said in Bailey, "It is no answer to say that the jury must find, and here found, that a fraudulent intent existed. The jury by their verdict cannot add to the facts before them. If nothing be shown but a mere breach of a contract of service and a mere failure to pay a debt, the jury have nothing else to go upon, and the evidence becomes nothing more because of their finding (at p. 233)." Note that this case was decided on the 13th Amendment so that no consideration was given to the argument also made under the 14th Amendment. Also see *Manley* v. *Georgia*, 279 US 1 (1929) *op cit*, at p. 0, decided under the 14th Amendment.

It is axiomatic that fraud must be expressly pleaded and proven (*McClintock* v. *Royall*, 173 Va. 408) and that such proof must be by clear, cogent and convincing evidence, fraud *never being presumed* (*Hutcheson* v. *Savings Bank*, 129 Va. 281). The only allegation of fraud is found in the creditor's intervening petition stating in paragraph five thereof, that the transfer is void as a fraudulent conveyance because not supported by sufficient consideration. Such a conclusory allegation is not sufficient to meet the requirement of pleading with particularity where fraud is involved. This is the law under the Federal Civil Rules, Rule 9, as well as under the laws of Virginia, and common justice.

Moreover, an allegation that a particular transfer of property is void as a fraudulent conveyance must be grounded in evidence that the knowledge of the fraudulent intent was clearly brought home to the grantee. Virginia Code, § 55-80, *op. cit.*, p. 0. Also see *Herring* v. *Wicker*, 70 Va. (29 Gratt.) 628; *Garland* v. *Rives*, 25 Va. (4 Rand.) 282. Here, not only is there no such finding by either the commissioner or the court, but there is absolutely no evidence on the record to support or even suggest such a finding.

2. Rules of court are as binding on courts and litigants as regulations are binding on the executive and cannot be ignored to the detriment of litigants acting in reliance thereon. Thus, in reaching the ruling, the courts below disregarded specific provisions of the Rules of the Virginia Supreme Court providing that lack of verification in pleadings (herein answers to interrogatories) must be timely objected to or otherwise waived, and the courts below consequently rejected the answers by the debtor to interrogatories except as "admissions against interest" in violation of the constitutional right to a fair hearing.

The refusal of the Virginia courts to follow their own rules on evidentiary hearings have deprived Petitioners

of property without due process of law in violation of the 14th Amendment to the Constitution of the United States; and such rules of practice are binding on courts as well as on litigants. This Court has long held that regulations promulgated by executive agencies are binding on the President and the executive departments. See *Vitarelli* v. *Seaton*, 359 US 535 (1959), cited with approval by this Court as recently as in *Nixon* v. *United States*, 418 US 683 (1974).

Rule 1:10 of the Rules of the Supreme Court of Virginia are clearly binding on litigants and courts alike. The failure of creditor's counsel to make a timely objection to the filing of answers to interrogatories by counsel rather than under oath was not timely made and was consequently waived under the specific provisions of the Rule. For the Virginia courts to ignore their own rules was, in Karl Llewellyn's brutal phrase, a "sin against the nature of our case law" for a court "*deliberately* to turn the back upon a pertinent but uncomfortable authority, leaving it unmentioned and therefore leaving the question upon as to how the matter now really stands . . ." *The Common Law Tradition*, p. 256. In consequence, the court jeopardizes not merely its "credit for candor, it is its credit for fairness" that is called into question. *Ibid*, p. 258. This was an error by the commissioner and the courts of Virginia of constitutional proportions, in denying a fair hearing and deprived petitioners of valuable property without due process of law in violation of the 14th Amendment to the Constitution of the United States.

CONCLUSION

The issues presented in this petition involve constitutional rather than statutory authority and the binding effect of the court's promulgated rules of practice on the courts themselves. If the rule-making and law-

judging authorities are immune from their own promulgated law, the Constitution is damaged as much as by a lawless executive. Lawless courts are indeed a contradiction of terms at least as long as this Court sits. This calls for the intervention by this Court into areas it normally chooses to leave to the states except where a gross abuse of justice has been committed in violation of the clear constitutional guarantees of the 14th Amendment. The Constitution requires nothing less.

The justifications for the rulings below are in terms of informality and terseness. A part-time commissioner in chancery could not either find the time or the inclination to state on paper his reasons and authorities, so, with candid indolence or outrageous abdication of the judging function, he incorporates by reference as the law of the case a letter to him from counsel for one of the creditors. The trial judge recognized that there was difficulty in sustaining the commissioner's report on the only ground of fraud mentioned in the report, namely the lack of consideration, but the judge then belittled the significance of that ground as "only one of the badges of fraud relied upon by the commissioner," whose report was sustained "on balance by the totality of the evidence." Is this anything but a judicial cover-up of drum-head justice, or—an apter comparison —a nightmarish farce out of Dickens?

Again the circuit judge could not be bothered with stating his reasons or his findings of fact; inconvenient violations of the promulgated rules of practice of Virginia are dealt with by being ignored. Elemental requirements of a due process hearing were flouted.

The issues of justice and fairness under the 14th Amendment must be faced squarely and resolved resolutely in the interests of judicial candor and fairness. They should not be settled by suppression of inconvenient facts or deliberate avoidance of pertinent but

uncomfortable authority. Their resolution cannot be put on the backs of an argumentative memorandum submitted by counsel for a creditor who thus is permitted to exercise the power of judging in his own cause. That would constitute in effect an unconstitutional delegation of the judging function.

For the foregoing reasons, it is respectfully submitted that a writ of certiorari issue to the Supreme Court of Virginia.

Respectfully submitted,

FRANK E. BROWN, JR.
BARHAM, RADIGAN, SUITERS & BROWN
2009 N. 14th Street
Arlington, Virginia 22216

CLIFFORD J. HYNNING
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: 232-0775

Attorneys for Petitioners

APPENDIX

APPENDIX

EXCERPTS FROM REPORT OF COMMISSIONER IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA, CHANCERY NO. 23183

"Your Commissioner further finds that an order was entered in this cause on May 24, 1974, directing CLIFFORD J. HYNNING to answer in writing and under oath the interrogatories submitted to him by LOUIS H. BEAN, Intervenor, on or before July 10, 1974. Your Commissioner further finds that the said answers to interrogatories were filed on June 10, 1974 by Counsel for CLIFFORD J. HYNNING and were not under oath as directed by Court; however, your Commissioner considers them as admissions against interest and found that they were incomplete and evasive.

"Your Commissioner further finds that there was no settlement statement made to show this transfer and no appraisal was done on the property to show the valuation. Your Commissioner further finds that the said CLIFFORD J. HYNNING failed to produce [p. 9] sufficient evidence of consideration received by him for the transfer of this property by him to himself and his daughter; namely, a $22,000.00 promissory note and certain insurance policies aggregating $20,000.00 as directed in the *Subpoena Duces Tecum* issued by the Clerk of the Court on August 22, 1974.

"Your Commissioner further finds that the said CLIFFORD J. HYNNING is still in possession of the said property and that his daughter, CAROL HYNNING SMITH, has failed to appear or offer evidence, although she is represented by the same Counsel who represents MR. HYNNING.

"Your Commissioner is of the opinion, based on the evidence, that the evidence shows a *prima facia* case of

fraud and the burden shifts to the upholder of the transaction to establish its fairness. This he has failed to do. Nearly all of the badges of fraud are present in this case. Fraud can be clearly inferred from the facts and circumstances involved here that MR. HYNNING has attempted by this conveyance to hinder, delay and defraud his creditors by wrongfully withdrawing his property from the reach of the said creditors.

"Your Commissioner further finds from his examination of the title and from all the evidence presented in this cause, including MR. HYNNING's admission and his failure to admit certain facts through his interrogatories, that the deed from CLIFFORD J. HYNNING to CLIFFORD J. HYNNING and CAROL H. SMITH, as joint tenants with the common law right of survivorship to the survivor of either of them, dated September 9, 1971 and recorded September 17, 1971 [p. 10] in Deed Book 1765 at page 497 among the said County land records is a void and fraudulent conveyance as defined by Section 55-80 of the Code of Virginia, and that the Complainant, GLADYS L. BAKER, and Intervenor, LOUIS H. BEAN, are entitled to have the whole property sold to satisfy the lien creditors as set forth in ITEM TWO of this report. Your Commissioner adopts as his memorandum of the law in this case TERRANCE NEY's letter dated September 10, 1974, filed herein." [p. 11] [Annexed hereto in excerpts.] Iverson H. Almand, Commissioner in Chancery.

Excerpts from Mr. Ney's September 10, 1974 letter are as follows:

"Circumstances which are indicative of fraud are often referred to as badges thereof. These circumstances are:

1. The relationship of the parties.

2. The grantor's insolvency.

3. Pursuit of the grantor by his creditors.

4. Want of consideration.

5. Retention of the possession of property by the grantor.

6. Fraudulent incurrence of indebtedness after the conveyance. Here, nearly every badge is present.

1. *The relationship of the parties.* Carol Hynning Smith is the grantor's daughter.

2. *Grantor's insolvency.* While there is no evidence that the grantor was either solvent or insolvent there were two unsatisfied money judgments in Arlington County outstanding at the time of this particular conveyance.

3. *Pursuant to the grantor by his creditors.* Again, two unsatisfied money judgments were outstanding at the time of the conveyance, including those which are involved in this particular suit.

4. *Want of consideration.* The alleged consideration—a promissory note and proceeds of certain insurance policies—has not been shown. Again, the non-response to the *Subpoena Duces Tecum* makes this clear.

5. *Retention of the possession of the property by the grantor.* Mr. Hynning has continued to live in the subject property. [p. 3]

6. *Fraudulent incurrence of indebtedness after the conveyance.* No evidence has been presented with regard to this point." [p. 4]

CIRCUIT COURT OF ARLINGTON COUNTY
VIRGINIA

April 29, 1975

Mrs. Mary Cook Hackman
Attorney at Law
2009 N. 14th Street
Arlington, Virginia 22201

John Ninian Beall, Esquire
4057 Chain Bridge Road
Fairfax, Virginia 22030

Terrence Ney, Esquire
Boothe, Prichard & Dudley
4085 University Drive
Fairfax, Virginia 22030

Frank J. Sando, Esquire
6911 Richmond Highway
Alexandria, Virginia 22306

Frank E. Brown, Jr., Esquire
Barham, Radigan & Suiters
2009 N. Fourteenth Street
Arlington, Virginia 22216

James H. Simmonds, Esquire
Simmonds, Coleburn, Towner
& Carman
1500 N. Courthouse Road
Arlington, Virginia 22216

Re: In Chancery No. 23183
Baker v. *Hynning, et al*

Dear Mrs. Hackman and Gentlemen:

I have carefully reviewed the findings of the Commissioner, the Interrogatories contained in the file and responses thereto, and also the able arguments of counsel at the hearing on exceptions duly filed to the Commissioner's report, and hasten to advise you of my conclusions.

With respect to the exceptions preserved on behalf of his client by Mr. Simmons, I am of the opinion that the requested fee of $2,000.00 plus costs advanced of $333.33 is reasonable and is hereby approved.

With respect to the exceptions presented by Respondents Hynning and Smith, it is the duty of the Court to review the evidence and to weigh the same according to recognized norms. After so doing I am of the opinion that the Commissioner's findings are supported by the record made in the case, and accordingly will be affirmed. In this connection the duty of the Court is to review the evidence upon which the Commissioner's findings were based and accordingly I do not feel it appropriate to consider other than the evidence before the Commissioner.

It should be observed that the issue made in argument of the missing note goes only to the question of lack of consideration which in turn is only one of the badges of fraud relied upon by the Commissioner. On balance, his findings are supported by the totality of the evidence.

If prevailing counsel will prepare an appropriate order and present the same to opposing counsel for approval as to form and the preservation of exceptions as desired it will be promptly entered.

Very truly yours,

/s/ Charles H. Duff
CHARLES H. DUFF
Judge

CHD:kw

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th day of April, 1976.

The petition of Clifford J. Hynning and Carol H. Smith for an appeal from and supersedeas to a decree entered by the Circuit Court of Arlington County on the 20th day of June, 1975, in a certain chancery cause then therein depending, wherein Gladys L. Baker was plaintiff and the petitioners and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that there is no reversible error in the decree appealed from, doth reject said petition, and refuse said appeal and supersedeas, the effect of which is to affirm the decree of the said circuit court.

A Copy,

Teste:

Howard G. Turner, Clerk

By: /s/ Richard R. [Illegible]
Deputy Clerk

Record No. 751360